IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 4961 of 2007()

CRIME NO.664/07 OF KUNNANKULAM POLICE STATION

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PETITIONERS

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1. K.M.PAULSON, U,D.CLERK,
   SUB REGISTRY OFFICE, MUNDUR, KOLENGADAN HOUSE,
   VICTORIA GARDEN,PERAMANGAL VILLAGE, THRISSUR.

2. T.D.SATHYAN, U.D.CLERK,
   SUB REGISTRY OFFICE,
   KODALI, THEKKEMADATHIL HOUSE,
   PADUKKAD, VIYYUR POST, THRISSUR.

BY ADV. SRI.RASHEED C.NOORANAD

RESPONDENTS:

S.I. OF POLICE,KUNNANKULAM POLICE
STATION, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, ALONG WITH BA NO. 4962 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 4961 & 4962 of 2007

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Dated this the 25th day of September, 2007

O R D E R

These applications are for anticipatory bail. The petitioners are accused 3 and 4 in both the crimes. Identical crimes have been registered on the basis of a complaint filed by an Urban Co-operative Bank. The complaints as they originally filed had only two accused persons. The second accused is the owner of an item of property. The first accused had availed a loan from the bank offering the second accused and his property as surety/security. To show the title of the second accused over the property, encumbrance certificates were produced. The encumbrance certificates showed that there was no encumbrance on the property and that the second accused was the owner of the property. But in fact prior to the offering of security, there was already an assignment of the second accused's right in the property to some one else. Suppressing that transaction, the second accused offered himself as the surety and his property as the security. The bank's interests were thereby frustrated.

2. In the course of investigation, it was revealed that the encumbrance certificate was issued from the Sub Registrar's Office without showing the prior assignment by the second accused in favour of some other person. Accused 3 and 4 are persons employed in the Sub Registrar Office. They were responsible for issue of the encumbrance certificate. It was their omission/misconduct that the prior assignment was not noted in the encumbrance certificate. The Investigating Officer brought them on the array of parties by a subsequent report alleging their contumacious involvement in the crimes. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that even accepting all the allegations, all that turns out is that there was an omission/failure/ inefficiency/inadequacy in the performance of the duty by accused 3 and 4. There is not a semblance of allegation even that the petitioners herein/A3 and A4 shared any common intention with Accused 1 and 2 in the culpable ploy pressed into service by them. The learned counsel for the petitioners prays that it would be harsh and insensitive to compel the petitioners to suffer the trauma of arrest and incarceration in criminal cases for the only error committed by them in not issuing the encumbrance certificate with the

relevant entry. The learned counsel submits that the relevant information has to be retrieved from the records/computer and the omission to secure that information by the petitioners and their omission to include the same in the certificate issued cannot be reckoned as indicative of any complicity on their party. It is, in these circumstances, prayed that anticipatory bail may be granted to the petitioners.

4. The learned Prosecutor opposes application. He submits that at the moment and with the available inputs it will have to be assumed that the omission to include the relevant transaction in the encumbrance certificate was wilful and not accidental. The petitioners may not, at any rate, be permitted to arm themselves with an order of anticipatory bail. They may be directed to resort to the ordinary and normal procedure of surrendering before the police or the learned Magistrate and then seek regular bail, submits the learned Prosecutor.

5. As the factual controversy raised appear to be peculiar, the learned Prosecutor was requested to study the case diary in detail and bring to the notice of the Court any relevant circumstances which would indicate the culpable responsibility and not the accidental error in the preparation of the encumbrance certificate. The learned Prosecutor, after going through the

case diary in detail, submits to the court that at the moment it can only be said that the error/omission could not have been accidental. Identical errors have committed in two certificates, which the prosecution wants to rely on.

6. I have rendered my very anxious consideration to the contentions raised. I must note that at the moment there is nothing at all to indicate that there was any contumacious collusion of accused 1 and 2 on the one hand and accused 3 and 4 on the other. Taking all the relevant circumstances into account, I am satisfied that the interests of justice will be ideally served by issuing a direction under Section 438 Cr.P.C. in favour of the petitioners. Appropriate conditions can of course be imposed.

7. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 3.10.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that the petitioners execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 4.10.2007 and 5.10.07 and thereafter on all Sundays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 3.10.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to their surrender on 3.10.2007 as directed in clause (1) above, they shall be released from custody on their executing bonds for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 3.10.2007.

(R. BASANT)
Judge

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